

## STATE OF VERMONT

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. 13,184

)

Appeal of )

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INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare denying her application for Medicaid. The issue is whether the petitioner is disabled within the meaning of the pertinent regulations.

FINDINGS OF FACT

1. The petitioner is a fifty-two-year-old woman who has an eighth grade education. She can read and write but she has no vocational history.
2. The petitioner has severe asthma for which she has been treated for at least nine years. She was treated in an emergency room for acute asthmatic attacks on two occasions in 1988, and on one occasion in 1991. Since that time, she has been treated with a variety of drugs and engaged in avoidant behaviors which have largely controlled the condition.
3. The petitioner lives with her husband and spends her days as a homemaker. She does her own housework, including sweeping and dusting and shops and cooks for her husband and herself. She works at a moderate pace with frequent breaks so as not to trigger shortness of breath. She sometimes carries laundry and shopping bags that typically weigh about twenty pounds. Her adult stepson carries heavier bags for her. She likes to watch T.V. in the evenings and occasionally visits friends. Her asthma has forced her to give up raising rabbits, which she did in the past. She has an air-conditioner and air-cleaner which she uses in her house. She is careful not to expose herself to extremes of cold or heat and humidity which can exacerbate her symptoms. About once per week, she experiences more severe symptoms during which she has trouble breathing and experiences an acid reflux. She takes medication for the acid reflux and usually sits down until she can catch her breath again. Sometimes her asthma wakes her up in the middle of the night but she gets fairly quick relief from inhalers.

4. The petitioner sees her physician about twice per year unless she has an emergency medical problem. Her treating physician provided the following opinion of her capacities: She can sit for eight hours, stand for four hours and walk for about one hour per day; she is limited to occasionally carrying and lifting up to twenty pounds and to frequently carrying and lifting up to ten pounds; she cannot crawl and can only occasionally squat; she may never be exposed to extreme temperatures, dust, fumes or gases during work. He stated in conclusion that she was:

. . . limited by severe asthma. Cannot be exposed to inhaled irritants that will exacerbate asthma nor can she be exposed to exertion that will trigger asthma. Also cannot be exposed to cold air.

5. Both the petitioner's and her physicians's statements are found to be accurate descriptions of her abilities. The petitioner is seeking Medicaid because she cannot afford to pay for all the medications she needs to control her asthma.

### ORDER

The decision of the Department denying Medicaid is affirmed.

### REASONS

The petitioner has the burden of showing that she cannot perform work due to her physical limitations. 20 C.F.R. § 416.912. Her physician has restricted her to work which can be classified as light within the definition of work categories found in the Social Security regulations. 20 C.F.R. § 416.967(b). The petitioner is a person classified as "closely approaching advanced age" in the regulations and has only a limited education. 20 C.F.R. § 404, Subpart P, Appendix II, Rule 202.00(d). However, under the "grid", a person with that profile is found to be able to do work in the national economy, even if she has no job skills. 20 C.F.R. § 404, Subpart P, Appendix II, Rule 202.09.

The petitioner does have further non-exertional limitations preventing her from working around dust, fumes, gases and temperature extremes. However, the petitioner has not shown that these limitations would prevent her from any and all employment or would significantly restrict the number of light work jobs which she might be able to perform. As such, she cannot be found to be disabled. The petitioner should be aware that her vocational-educational background and functional abilities, if unchanged, would make her eligible for Medicaid under the current regulations when she turns 55. See 20 C.F.R. § 404, Subpart P, Appendix II, Rule 202.01. In the meantime, if she is unable to pay for her medications, she is urged to apply for General Assistance to see if she might be eligible for assistance under that program.

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